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January 6, 2006

Commissioner for Patents
P. O. Box 1450,
Alexandria, VA 22313-1450

Re: Wrongly Identified Office Action

Sir:

Enclosed is an Office Action received by the undersigned, who is an attorney of record in application No. 10/060,458. The cover page and other pages of the Office Action identify application No. 10/060,458, but the substance of the Office Action has nothing to do with that application, and clearly is directed to a completely unrelated case.

From a search of the USPTO website, I have concluded that the Office Action actually relates to application No. 11/060,458, for which neither I nor anyone in our firm is responsible.

I am therefore returning the enclosed Office Action without keeping any copy of it.

Respectfully,

Christopher C. Dunham

Christopher C. Dunham
Reg. No. 22,031

Enc. Office Action

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,458	002	Fumiaki Arai	58122-Z CCD	6616

7590 12/21/2005

Christopher C. Dunham
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EXAMINER	
PARKER, FREDERICK JOHN	
ART UNIT	PAPER NUMBER
1762	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

58122-2 CCD

Application No.	Applicant(s)	
10/060,458	ARAI ET AL.	
Examiner	**Art Unit**	
LUU MATTHEW	3663	

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

3mo - 3/21/06
4mo - 4/21/06
5mo - 5/21/06
6mo. 6/21/06 (N)

4)☒ Claim(s) *8-17 and 34-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *8-17 and 34-48* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 8-17 and 34-41, drawn to a product (a database comprising time marked vehicle operation data), classified in class 705, subclass 4.

II. Claims 42-48, drawn to a process of using a product (a rating of at least one driver utilizing a database), classified in class 701, subclass 29.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product such as NASCAR points sporting event.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Upon election of invention I, the applicant is further required under 35 U.S.C. 121 to elect on of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable (currently, no claims are generic):

A. Data for a plurality of vehicles.

B. Data for a plurality of drivers.

C. Data for a plurality of trips.

D. Data pertaining to an agreement.

5. Upon election of species A, B, C or D, the applicant is further required under 35 U.S.C. 121 to elect on of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable (currently, no claims are generic):

a. The database used for teaching.

b. The database used for monitoring behavior.

c. The database used for rating at least one driver.

d. The database used for predicting likely future events.

e. The database is used to rate one driver for employment.

f. The database is used to rate one driver for life insurance.

g. The database is used to rate one driver for health insurance.

h. The database is used to rate one driver for lending.

6. Upon election of invention II, the applicant is further required under 35 U.S.C. 121 to elect on of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable (currently, no claims are generic):

(1) The rating used for teaching.

(2) The rating used for monitoring behavior.

(3) The rating used for predicting the occurrence of a future.

(4) The rating used for employment.

(5) The rating used for insurance.

(6) The rating used for lending.

7. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement (e.g., I, A, a, and (1)), and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUU MATTHEW whose telephone number is (571) 272-7663. The examiner can normally be reached on Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JACK KEITH can be reached on (571) 272-7663. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Luu

MATTHEW LUU
PRIMARY EXAMINER